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10/729,940

12/09/2003

Boris Ginzburg

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EXAMINER

JAIN, RAJ K

ART UNIT

PAPER NUMBER

2616

MAIL DATE

DELIVERY MODE

01/23/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/729,940

**Applicant(s)**

GINZBURG ET AL.

**Examiner**

Raj K. Jain

**Art Unit**

2616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 September 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1, 5-7, 12-15, 19-23, 27-30, 34 and 35 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 12, 13, 19, 20, 27, 28 and 34 is/are rejected.
- 7) ☒ Claim(s) 5-7, 14, 15, 22, 23, 29, 30 and 35 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- ☐ Notice of Informal Patent Application
- ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Claim Objections***

Claim 1 is objected to because of the following informalities: Remove comas from lines 7-10. Appropriate correction is required.

Claim 6 is objected to because of the following informalities: Insert "is" before "related" in line 5. Appropriate correction is required.

Claims 12-15 and 19-23 are objected to because of the following informalities: The subject claims are duplicate in nature. Furthermore all comments below addressed to claims 12-15 also pertain to claims 19-23 and therefore appropriate correction is required for both set of claims.

Claims 12 and 19 are objected to because of the following informalities: Replace "a processor with "a computer readable medium encoded with computer executable instructions", furthermore remove the word "processor" as it appears in the claims 12-15, 19-23, 27-29 and fix appropriately. In line 16 insert "time" after "other". Remove all context to "a software module" from claims 12- 15, 19-23, 27-29 and replace with "computer executable instructions".

Claim 13 is objected to because of the following informalities: Insert "value" after "probability". Appropriate correction is required.

Claim 15 objected to because of the following informalities: Insert "from a station" after "window" in line 3 and insert "within said contention window" after "transmitted" in line 4. Appropriate correction is required.

Claim 20 and 21 are objected to because of the following informalities: The claims don't make sense. Appropriate correction is required.

Claims 28-30 are objected to because of the following informalities: Replace "26" with "27". Appropriate correction is required.

Claims 28 is objected to because of the following informalities: Insert "value" after "probability". Appropriate correction is required.

Claims 34 is objected to because of the following informalities: Remove comas from lines 1-8, insert "value" in last line after "probability" and insert "and" in line 8 after "station;," remove "instructions when" in line 9. Appropriate correction is required.

Claim 35 is objected to because of the following informalities: Replace "33" with "34". Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 12, 19, 27 and 35 recite the limitation "said desired slot" in appropriate lines. There is insufficient antecedent basis for this limitation in the claims.

Claims 1 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1 line 6 here in part "...counting the data packets transmitted from said first station to provide a second number and dividing said second number by said first

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number". It is not clear when counting begins or ends and dividing second number by first number to get what? Appropriate correction is required.

Claim 5 lines 5-8 is not clear what is being performed and what is the desired outcome. For example "counting data packets" it is not clear which packets are being referred to, first number or second number, and than "dividing the third number by fourth number" to obtain what? Appropriate correction is required to clarify exactly what is the desired outcome.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 12, 13, 19, 20, 27, 28 and 34 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Moutarlier (US 2004/0028072 A1). Moutarlier discloses a method comprising: controlling an access of a first station 150 (fig. 1) to a shared wireless media 120 based on a collision rate parameter calculated from at least a first probability value representing a probability to transmit by the first station a data packet within a desired time slot of a contention window (see paras 27, 28, Fig. 4, a probability value is calculated for an interval less than a contention window) and a second

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probability value representing a probability of said data packet, when transmitted by the first station within the desired time slot of said contention window to collide with at least one other data packet transmitted by a second station (see para 40-51, fig. 4, a probability value for two or more clients can be calculated with a back-off interval as shown in graph of Fig. 4); and transmitting a data packet from said first station to a shared wireless media based on a collision rate parameter calculated from said first and second probability values (again see Fig. 4 and paras 40-51).

### ***Allowable Subject Matter***

Claims 5-7, 14, 15, 22, 23, 29, 30 and 35 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

### ***Response to Arguments***

Applicant's arguments filed September 5, 2007 have been fully considered but they are not persuasive. Due to numerous errors in the amended claims, Examiner presents this Non-Final Action for review by Applicant and to correct all claims as appropriate prior to any further action.

### ***Conclusion***

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raj K. Jain whose telephone number is 571-272-3145. The examiner can normally be reached on M-F 8-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chi Pham can be reached on 571-272-3179. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

***Raj K. Jain***

***/Raj K. Jain/***

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January 9, 2008